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# A-76 COMMUNICATOR

A QUARTERLY NEWSLETTER FOCUSED ON DOE A-76 STUDIES  
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## FEDERAL EMPLOYEES COULD GET GAO APPEAL RIGHTS UNDER A-76 REVISIONS

A proposed policy change could expand the rights of Federal employees who must compete for their jobs with private contractors. These new rules could allow a representative of employees to appeal A-76 decisions to the General Accounting Office (GAO).

The proposed change contained in the revised Draft Office of Management and Budget Circular A-76 is considered by many as an attempt to give employees similar appeal rights as contractors who lose out in public-private job competitions. A provision in the new A-76 could give the official representative of in-house employees—known as the Agency Tender Official (ATO)—the legal basis to file GAO bid protests on behalf of employees. Specifically, the new circular makes the ATO a “directly interested party,” a legal classification that could allow them to file protests. Observers saw the language as OMB’s attempt to give Federal employees the right to appeal adverse A-76 decisions to GAO. But it’s up to the General Accounting Office to decide whether to accept protests from the ATO, and the agency is still reviewing the matter.

GAO has allowed contractors to protest A-76 decisions since the 1980s, but has never accepted protests from in-house employees or unions that represent Federal employees. In a June 2000 decision, GAO ruled that unions lack standing to file protests because they are not “interested parties” under the 1984 Competition in Contracting Act, partly because unions cannot receive a contract to perform work in question. But in a decision issued this July, GAO noted that Federal Prison Industries could be an interested party, despite the fact that it does not enter into traditional contracts when it performs work for Federal agencies.

Comments to the revised Circular A-76 were accepted in January, the Office of Management and Budget anticipates a release of the new A-76 Circular this spring.

We will keep you informed of this and other A-76 related topics as they arise.

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## **DOE STUDIES HAVE ENTERED INTO THE PERFORMANCE WORK STATEMENT PHASE**

The Graphics, Human Resources Training, and Logistics A-76 functional area studies are all in the Performance Work Statement (PWS) Phase of the cost comparison process. The Information Technology A-76 functional area study is the largest of DOE's FY 02 Competitive Sourcing Studies and it requires more time for data collection. The PWS development for the IT study is scheduled to begin in late June 2003.

The PWS defines specific results or outcomes derived from the commercial activity, including performance measures, standards and timeframes. A PWS is the description of what the Government intends to buy, regardless of the outcome of the cost comparison. It is a method for acquiring what is required and placing the responsibility for how it is accomplished on the Service Provider. The Government's Management Plan and related costs, and Contractor/ISSA technical and cost proposals will all be based upon the PWS.

The PWS eventually becomes a portion of the Request for Proposal (RFP) or solicitation issued by the Contracting Office. PWS development is a critical phase in both the acquisition and cost comparison process because it defines the work requirements associated with mission accomplishment. It also provides the historical workload and technical data that is necessary for the Government and private sector offerors to formulate their respective technical and cost proposals. The steps in the PWS development process are:

- Identifying activity goals consistent with the mission of the organization;
- Developing desired performance outcomes for the services to be provided based on these activity goals; and
- Developing performance measures and standards to gauge progress toward the outcomes.

The Quality Assurance Surveillance Plan (QASP) is the mechanism for implementing the inspection and acceptance clauses in the Federal Acquisition Regulations (FAR); therefore, Quality Assurance is performed by the Government to assess Service Provider performance. The key to developing the QASP is to base the metrics on controllable factors that a service provider should be able to accomplish without dependence on other Government processes or decisions, and to motivate the right behaviors. Monitoring performance can become very costly if the QASP is written to check every task, everyday for 100 percent compliance. The Government needs to first determine to what standard they are currently performing before setting higher standards that either an MEO or contract/ISSA provider could not achieve without great expense.

## OMB PROPOSES NEW RULES FOR COMPETITION

The Office of Management and Budget (OMB) have proposed a significant overhaul of OMB Circular A-76 and competitive sourcing guidelines. The changes focus on accelerating the time for completing a competitive sourcing study and leveling the playing field between government and private offerors. The draft policy was published in the *Federal Register* in November for a 30-day review period. Comments were due on 15 December 2002.

Highlights include:

- A 12-month specified time limit for A-76 competitions for agencies.
- A presumption that all work is commercial unless proven otherwise.
- Competition and re-competition of work performed by other government agencies (Inter service support agreements).
- If in-house employees fail to submit a proposal on time, their jobs could be directly outsourced to the private sector.
- Establishment of a Business Case Analysis process for studies involving 50 or less employees.
- Identification of specific A-76 Officials and requirements that A-76 implementation and oversight be centralized.
- Teams of Federal employees that win job competitions will be required to sign binding performance agreements and will be subject to future competition after their agreements expire.

Federal agencies almost always look to the private sector to perform new work, but agencies could use the best value process to let Federal employees compete for new projects, she said at the conference.

OMB overhauled the circular in response to the findings of the Commercial Activities Panel, a Congressionally mandated organization that urged widespread changes to Federal outsourcing policy in its April report.

## UPDATE ON FY02/03 STUDY TEAMS

### THE LOGISTICS FUNCTIONAL AREA STUDY TEAM

The Logistics Study is moving forward according to the planned schedule. Training was provided to the Commercial Activities Team, the Performance Work Statement Team and some anticipated members of the Management Plan Team by Grant Thornton, the study's support contractor. More just-in-time training will be provided to individual teams as needed.

The Performance Work Statement (PWS) phase, under the leadership of Louis D'Angelo, is underway. Data collection site visits have been conducted at the Albuquerque Operations Office, the Nevada Operations Office and the Oakland Operations Office for the National Nuclear Security Administration (NNSA) portion of the study. A first, rough draft of the PWS has been completed and is in the process of being reviewed by the PWS team. It should be noted that much of this first draft was prepared prior to the announcement of the reorganization of NNSA. As a result, the next draft may be significantly different as it seeks to encompass the newly announced organization.

**UPDATE ON FY02/03 STUDY TEAMS**

Data collection is also on-going for the DOE (non-NNSA) portion of the Logistics study. A number of data collection sessions have been held at Headquarters and site visits are scheduled for the Strategic Petroleum Reserve Office and the Albany Research Center. These three locations contain the largest clusters of positions within the non-NNSA portion of the Logistics Study. Data collection at other sites will be conducted via telephone and/or video teleconferencing. The PWS phase is scheduled to be completed by July 2003.

**THE GRAPHICS FUNCTIONAL AREA STUDY TEAM**

The Graphics Study has moved along aggressively towards its planned completion date of July 2003. At this time, a draft solicitation has been provided to the Management Plan Team and four potential outside service providers. These four vendors were down-selected based on a variety of criteria from a number of General Services Administration Schedules. Comments on the draft solicitation are currently being evaluated by the Performance Work Statement (PWS) team under the leadership of Mary Anderson. It is anticipated that a final solicitation will be issued in early to mid-March. A copy of the draft solicitation may be viewed at <http://www.ma.mbe.doe.gov/a-76/PWS.htm>

The Management Plan Team, led by Bill Talbot and Virginia Bitler, has been provided just-in-time training specific to their needs. They are now in the process of developing their strategy and the various documents required in response to the draft solicitation.

**THE HUMAN RESOURCES (HR) FUNCTIONAL AREA STUDY TEAM**

The Human Resources (HR) A-76 Functional Area Study Team (FAST) is completing the Performance Work Statement phase of its study. The PWS team, headed by JoAnne Whitman of the Office of Training & Human Resource Development, has been working with Jupiter contractors in collecting data on the training functions and positions - Federal and Contractor throughout the Department. Data collection included several site visits around the DOE complex. The PWS team is working closely with the Contracting Officer to determine the timing and method for distributing a draft PWS.

The Management Plan team is being assembled and will be comprised of representatives from around the complex. Team members will include individuals with the skills necessary to prepare the Management plan, e.g., budget, training, and organization design.

**UPDATE ON THE STUDY TEAMS - Cont.****THE FINANCIAL SERVICES FUNCTIONAL AREA STUDY TEAM**

FINANCIAL SERVICES A-76 STUDY PASSES THE HALF-WAY POINT - It may be hard to believe, but by the time you read this, the Financial Services Study will be more than half finished! We began our study March 22, 2002 and will complete near the end of this calendar year. As a reminder, Financial Services comprises more than 200 full time equivalent (FTE) work years of effort processing most of the Department's accounting transactions, as well as accomplishing the Department's financial statement preparation and reporting activities. We currently perform financial services at over 20 locations Department-wide.

Our Performance Work Statement Team, headed by Nancy Fitchpatrick of the Oak Ridge Operations Office has nearly finished their exacting and arduous work. The result, scheduled for early March 2003, is a statement of work that will accompany the request for proposals which will be provided to private sector companies and the Government for their respective bids. The first draft RFP should hit the street in April 2003. Then begins a process of bidder questions and comments, one or more additional RFP drafts, final bids and an evaluation of bid price and other factors. If everything goes according to schedule, the Department should announce who wins the competition late in calendar year 2003. The winning bidder (either MEO or private sector) will have approximately 4 to 5 months to transition. If the MEO wins the bid, it is not clear if financial services will continue to be performed at the existing (or fewer) number of locations. Likewise, we will not know how many positions will perform the financial services work until final award.

The Management Plan Team (headed by Savannah River's John Pescosolido) is currently preparing the Government's bid (called the Most Efficient Organization (MEO)). John's team has visited some sites, will soon be visiting other sites, and will be interviewing some sites by phone. By regulation, the details of the MEO cannot be known by anyone other than the Management Plan Team and a few confidential reviewing officials until after the competition is completed and the winning bidder is known.

Communicating Study progress to our employees continues to be a high priority. The Steering Team conducts regular conference calls with field CFO managers about once a month, and we have held two all-hands video teleconference calls since the study started (the last one took place on December 17, 2002). We plan to hold the next all-hands video teleconference call sometime in April. As always, we welcome any comments, questions or concerns, which can be sent to the Study Coordinator, Paul Anderson ([paul.anderson@srs.gov](mailto:paul.anderson@srs.gov), or (803) 725-5607).

**UPDATE ON THE STUDY TEAMS - Cont.****THE CIVIL RIGHTS FUNCTIONAL AREA STUDY TEAM**

The A-76 Study for the Office of Civil Rights is a Direct Conversion Study. Preparations for the study began in May 2002 with the development of the A-76 Direct Conversion Plan. Team members identified in the Plan began working in earnest with the contractor in July 2002, establishing project schedules and milestones, determining roles and responsibility and validating the scope of work. During August and September, the contractor began the task of collecting current service requirements and workload data, conducting stakeholder analysis, and project future service requirements. Beginning in late August 2002, and running through September, the contractor conducted a local market review, and collected estimates for government costs as well as industry's costs. From October through January, the team worked arduously on the Performance Work Statement that we forwarded in final to the Contracting Officer on February 4, 2003. Next steps will be to finalize the transition plan. We anticipate issuing the solicitation by the end of March, with proposals due to contracting officer by April 17, and an award date approximately June 10.

**THE INFORMATION TECHNOLOGY FUNCTIONAL AREA STUDY TEAM**

The IT study is progressing according to the published Plan of Action and Milestones. We have successfully completed the Planning Phase, and presently are in the latter half of the Data Collection phase.

During the Planning Phase, the following milestones were met:

- ◆ Competitive sourcing overview training was provided to Headquarters and Field Office points of contact;
- ◆ A Training Plan was created;
- ◆ The Communications Plan was revised and assessed;
- ◆ A roles and responsibilities document was created;
- ◆ A data collection plan was crafted;
- ◆ The plan of actions and milestones was completed; and
- ◆ The scoping study was completed.

The IT Study Team and its support contractors Grant Thornton, and Jupiter Corporation began the field Data Collection Phase in December 2002. The team is completing the field pre- Performance Work Statement (PWS) data collection phase where IT support data for Federal Staff, M&O Contractors, and IT Support Contractors was collected. The IT study team praised the field points of contact (POC's) stating, "The success of the field data collection phase was directly attributed to the field POC's who worked diligently facilitating meetings and ensuring staff accessibility at each site visited. Additionally, the POC's ensured the vast amount of material requested by the Study Team was collected and made readily available to the Study Team immediately upon arrival."

Headquarters Data Collection began the week of March 17, 2003.

### WHAT HAPPENS NEXT??

The development of the Management Plan is the next step in the Competitive Sourcing Process. It describes the Government's Most Efficient Organization (MEO), and includes the following:

- The Most Efficient Organization (MEO), which reflects the Government's most efficient organization that meets the requirements of the Performance Work Statement (PWS) and identifies the organizational structures, staffing and operating procedures upon which the Government's offer is based.
- The In-House Cost Estimate (IHCE), which provides a description of all costs associated with the performance of the MEO and any assets that are not provided to the contract/ISSA but that will be used by the MEO.
- The Transition Plan (TP), which outlines how the Government will transition from the current organization to MEO or contractor/ISSA performance.
- The Technical Performance Plan (TPP) (when the Cost Technical Trade-off source selection process is used), which provides a technical description of how the MEO will perform the work and which is prepared in accordance with Section L of the solicitation.
- A summary, reflecting an overall comparison of the current organization with the Most Efficient Organization (MEO) and a review of special initiatives or assumptions related to the MEO.

Every member of the MEO team must be very familiar with the PWS. There are required services identified in the PWS that must align with the functions and positions outlined in the Government Management Plan.

### 2002 DOE INHERENTLY GOVERNMENTAL AND FEDERAL ACTIVITIES INVENTORY REFORM ACT (FAIR Act) COMMERCIAL ACTIVITIES INVENTORY

On February 6, 2003, the Office of Management and Budget (OMB); Executive Office of the President, announced in the Federal Register the public availability of agency (including DOE) inventories of activities that are or are not inherently governmental in nature. DOE's 2002 Inventory is available through the Department's Competitive Sourcing/ A-76 Internet site at:  
<http://www.ma.mbe.doe.gov/a-76>.

The FAIR Act requires OMB to publish an announcement of the public availability of agency inventories upon completion of OMB's review and consultation process concerning the content of agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the commercial activities list.



**2002 DOE INHERENTLY GOVERNMENTAL AND  
FEDERAL ACTIVITIES INVENTORY REFORM ACT (FAIR Act)  
COMMERCIAL ACTIVITIES INVENTORY Cont.**

Detailed instructions for the DOE challenge and appeal process may be found via the above cited DOE Internet site.

Questions or concerns regarding the Department's 2002 Inventory may be directed to Mark R. Hively, DOE Office of Competitive Sourcing/A-76 (ME-2.1), Office of Management, Budget and Evaluation/CFO, by e-mail at: [mark.hively@hq.doe.gov](mailto:mark.hively@hq.doe.gov); by telephone at: 202-586-5655; through the Competitive Sourcing/A-76 hotline at 202-586-1761; or through that office's e-mail address: [A76@hq.doe.gov](mailto:A76@hq.doe.gov).

In the 2002 inventory, 7,313 DOE full-time equivalents (FTEs) are identified as performing commercial activities; 916 FTEs are identified as under study; and, 6,863 FTEs are identified as performing inherently governmental activities.

The Department is currently waiting for OMB's guidance before commencing the collection of the 2003 inventory data, which is due to OMB by June 30<sup>th</sup>.

**FREQUENTLY ASKED QUESTIONS**

**Will a contractor be required to follow the same regulations as A-76? Will there be a "level playing field" for the government and the contractor?**

Yes. The Performance Work Statement will define the contract requirements. The contractor and the government will be submitting bids based on the requirements stated in the Performance Work Statement. The requirements will be the same for both the contractor and government. The Performance Work Statement will express contractual requirements in terms of desired performance and outputs; in most cases, it will not direct the service provider as to how to accomplish the work; therefore, some local instructions, policies and guidance that are currently used in performing the work may not be incorporated into the Performance Work Statement, or may be incorporated in a manner that makes their use elective. In those cases, both the MEO and the private sector bidder will be able to decide how to accomplish the work, which may or may not include use of current policies and instructions.

**Will a contractor's performance be held to the same standards as government employees?**

Yes. If a contractor wins the A-76 competition, its performance will be monitored under the Quality Assurance Surveillance Plan (QASP), which is created by the government prior to award. The QASP is the basis by which Federal employees will oversee in-house (government) or contract performance to ensure that the standards of the Performance Work Statement are met within the price offered.



**FREQUENTLY ASKED QUESTIONS CONT.****If the contractor wins the bid, how will the interface between the contractor and the government work?**

The Performance Work Statement will define the work required under the contract and identify interfaces between the private sector contractor and the remaining government organization. The contractor will be required to explain how these interfaces will work.

**What if the contractor wins the bid and then cannot accomplish the work?**

First, contractors submitting offers to perform the work specified in the Performance Work Statement must clearly identify how they plan to accomplish the work. This information is closely scrutinized to determine if it meets the solicitation's standards and is feasible. All offers are subjected to this in-depth evaluation. Second, stringent oversight provisions will be included in the QASP to monitor contractor performance. In the unlikely event that a contractor should fail and the contract is terminated, there are numerous contingency measures that may be taken. If this failure should occur soon after award, the next highest bidder could be considered or another solicitation could be issued for rebid. Accomplishing the work in the interim could be done by various means, including temporary assistance contracts, use of reservists, transfer of employees, Interservice Support Agreements, transporting the property to another site, etc.

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**FOR MORE INFORMATION ON COMPETITIVE SOURCING**

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